IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

OP.No. 27692 of 2001(V)

PETITIONER:

THE CATHOLIC SYRIAN BANK LTD.
A BANKING COMPANY INCORPORATED
UNDER THE COMPANIES ACT HAVING
REGD. OFFICE AT THRISSUR WITH
BRANCHES ALL OVER INDIA INCLUDING
ONE AT VAIKOM IN KOTTAYAM DISTRICT
REPRESENTED BY BRANCH MANAGER ITS
VAIKOM BRANCH SRI.JOSEPH ALAPATT,
AGED 40, S/O.A.J.PAUL.

BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
SMT.C.S.SHAILA
SRI.SAJI VARGHESE

RESPONDENTS:
---

1. THE STATE OF KERALA REPRESENTED
BY ITS CHIEF SECRETARY,
SECRETARIATE, TRIVANNDRUM.

2. THE DISTRICT COLLECTOR,
COLLECTORATE, KOTTAYAM.

3. THE TAHSILDAR, VAIKOM TALUK,
VAIKOM.

4. THE COMMISSIONER LAND REVENUE,
OFFICE OF THE COMMISSIONER OF LAND REVENUE,
TRIVANNDRUM.

5. E.K.LUKE, S/O.KURIAKOSE,
PAZAYAMADATHIL, REPRESENTED BY
NADUVILE, VILLAGE,
KIZHEKKUMCHERRY.

BY GOVERNMENT PLEADER SRI.P.BENJAMIN PAUL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 21/11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.N. RAMACHANDRAN NAIR, J.

O.P. No. 27692 OF 2001 V

Dated this the 21st day of November, 2006

J U D G M E N T

The dispute between the petitioner-Bank and the Government is with regard to priority in recovery against the defaulter, who is in arrears of abkari dues and loan taken from the Bank. The Senior counsel appearing for the petitioner Bank contended that the Bank has first charge and it has even obtained decree from Debt Recovery Tribunal. In fact, DRT has issued recovery certificate to the recovery officer for sale of the property. However, since there is a rival claim on priority between the petitioner and the Government, this court ordered sale by revenue authorities, which does not affect the Bank's interest. Government Pleader reported that the Tahsildar has sold the property for an amount of Rs.19,74,000/-. The balance is only settlement of dispute on priority between the petitioner and the Government. I do not think there is any need for this court to decide the issue as of now because the petitioner can raise the claim before the Tahsildar under Section 46 of the Revenue Recovery Act with mortgage deed, decree, etc. The Tahsildar will call for the records from the excise

authorities on solvency furnished and find out whether the property was subject to solvency Bond prior to mortgage and decide which of these is the first. The decision will be rendered by the Tahsildar, after hearing the petitioner Bank also and after perusing excise records. The Tahsildar will recover the collection charges and make payment of balance to the Bank or towards abkari dues in accordance with priority decided by him. If the decision is against the petitioner, copy of the order will be served on the petitioner for challenging the same if petitioner so desires.

The original petition is disposed of as above.

(C.N. RAMACHANDRAN NAIR, JUDGE)

aks

C.N.RAMACHANDRAN NAIR, J.

OP No.27692/01

J U D G M E N T

21st November, 2006